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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,171	01/04/2006	Alberto Manservigi	200224/41353	9280
4743 7590 04/24/2009 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606-6357			EXAMINER LEE, DANIEL H.	
			ART UNIT 4122	PAPER NUMBER
			MAIL DATE 04/24/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/539,171

Applicant(s)

MANSERVIGI ET AL.

Examiner

DANIEL LEE

Art Unit

4122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-14 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Claims 1-3 and 6-14 are pending as of the amendment dated March 26, 2009. Claims 4-5 have been canceled.

Response to Amendment and Arguments

2. Applicant's amendment to the specification for paragraphs beginning at page 1, line 19 and page 4, line 22 correcting grammatical and typographical errors has been fully considered and overcomes the objection to the disclosure. The objection to the disclosure has been withdrawn.
3. The amendment to claim 1 overcomes the rejection of claims 1-10 under 35 U.S.C. 112.

The rejection of claims 1-10 under 35 U.S.C. 112, second paragraph has been withdrawn.

4. Applicant's amendment to claim 1, specifically, requiring that the hopper is unloaded and loaded (fed) with a new type of tobacco while the conveyor associated with the forming table is left running, has been fully considered but is moot in view of the new grounds of rejection.

The rejection of claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Gamberini (US 3059650) in view of Applicant's admission has been withdrawn.

5. Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

Claim Objections

6. Claim 14 is objected to because of the following informalities: In claim 14, "keeping close" should be "keeping closed." Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claims 1-3 and 6-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Gamberini (US 3059650) in view of Chard (US 4630618).**

10. Regarding claim 1, Gamberini teaches a cigarette manufacturing machine, wherein the method comprises feeding the first type of shredded tobacco to the input hopper (col. 2, line 30; hopper 1) from a supply header (col. 2, line 31; tobacco deposited in this hopper), feeding the first type of shredded tobacco from the input hopper to at least one channel for forming a bead of tobacco (col. 2, line 34; layer of

tobacco), which is released onto a paper strip (col. 3, line 37; paper web) traveling along a forming table having a conveyor (col. 2, lines 32-33; conveyor carpet) for forming a continuous cigarette rod (col. 3, line 32; rod forming mechanism).

11. Gamberini does not expressly teach two types of tobacco, cutting off supply of the first type of tobacco to the input hopper, unloading the first type of shredded tobacco from the input hopper, channel and forming table by activating automatically a deflecting member to deflect a waste stream of shredded tobacco of the first type into container means arranged at an output end of the forming table and by leaving the conveyor of the forming table running; feeding, when the input hopper, channel, and forming table are completely empty, the second type of shredded tobacco through the supply header, input hopper, and forming table by leaving the conveyor of the forming table running; deflecting the second type of shredded tobacco into container means arranged at the end of the forming table by means of the deflecting member until the forming table is completely full; and deactivating automatically the deflecting member when the regular production using the second type of shredded tobacco is ready to be started.

12. Chard discloses an apparatus and method for forming a rod of smokeable material. Chard teaches two types of tobacco that are stored in a hopper and separated therein by a partition (see abstract). Chard also teaches a deflector (col. 3, lines 49-56; gate means... types of tobacco so as to impede transport of type A along the belt), and a gate that can be activated and deactivated automatically (see col. 3, lines 55-56; gate may be operated by mechanical or electrical means).

13. It would have been obvious to one of ordinary skill in the art to use the gate means in the process of Gamberini. The rationale to do so would have been the motivation provided by the teaching of Chard that to do so would predictably allow predetermined amounts of the second type of smoking material to be periodically deposited directly on the belt (see col. 4, lines 14-16).

14. Further regarding claim 1, Gamberini does not expressly teach that the hopper is unloaded and loaded with a new type of tobacco while the conveyor associated with the forming table is left running. Applicant asserts that conventional practice dictates that no manual operation can be performed by the manufacturing machine when at least one part of the manufacturing machine is left running. However, it would have been obvious to one of ordinary skill in the art to load the hopper with a new type of tobacco while the conveyor associated with the forming table is left running to minimize downtime and maximize production.

15. Further regarding claim 1, Gamberini does not expressly teach that the waste stream of shredded tobacco is deflected into container means arranged at the output end of the forming table. However, it would have been obvious to one of ordinary skill in the art to position a container next to a waste stream so that it could collect the deflected material.

16. Regarding claim 2, Gamberini does not expressly teach unloading the first type of tobacco comprises arresting the paper strip. However, Gamberini, in col. 3, lines 37-39, states, "the paper web is continuously drawn off from a reel in a manner well known in the art." Since it is well known to draw paper off a reel when tobacco is discharged, it

would have been obvious to one of ordinary skill in the art to arrest the paper strip when the tobacco is no longer discharged.

17. Regarding claim 3, Gamberini does not expressly teach only starting up supply of the paper strip when the manufacturing machine is filled completely with said second type of shredded tobacco. However, as discussed above, it would have been obvious to start up the supply of the paper strip only when tobacco is discharged, whether it was of the first type, the second type, or of any type. If the intent is to produce a tobacco product, it would be obvious to combine or synchronize both operations to maximize resources and the operation.

18. Regarding claim 6, Gamberini does not expressly teach the manufacturing machine is filled completely with shredded tobacco in successive loads; each load being formed inside the header separated from the input hopper, and being unloaded into the hopper by connecting the head to the input hopper. However, it is well known in the art that hoppers and supply headers are meant to be filled with tobacco so that tobacco may be withdrawn from them (col. 2, line 31; tobacco deposited in this hopper is withdrawn). Therefore, it would be expected that one would fill the hopper by connecting it to a supply header.

19. Regarding claim 7, Gamberini teaches the manufacturing machine is filled completely with shredded tobacco by forming a bead (col. 2, line 34; layer of tobacco) of tobacco along the forming table (col. 3, lines 12-13; conveyor carpet).

20. Regarding claim 8, Gamberini does not expressly disclose that tobacco is left without the relative paper strip until a given desired compactness is achieved.

Gamberini teaches that tobacco is deposited on top of the paper tape (col. 3, line 40). It would have been obvious to one of ordinary skill in the art to deposit the tobacco on top of the paper only when the desired compactness is achieved.

21. Regarding claim 9, Gamberini teaches the bead of tobacco, without the paper strip, is deflected into container means (col. 3, lines 14-15; discharge them into a collecting bin).

22. Regarding claim 10, Gamberini teaches a method wherein said paper strip is fed (col. 3, line 37; paper web), with the bead of tobacco, along the forming table to form a new type of continuous cigarette rod (col. 3, line 32; rod forming mechanism), an initial portion of the new type of continuous cigarette rod being deflected into the container means (col. 3, line 14; collecting bin).

23. Claims 11-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Gamberini (US 3059650) and Chard (US 4630618) as applied to claims 1-3 and 6-10 above in view of Hagemann et al. (US 4685476).

24. Gamberini and Chard teach the elements of claims 1-3 and 6-10 as discussed above in the rejection under 35 U.S.C. 103(a).

25. Regarding claims 11-14, Gamberini teaches the supply header and the hopper as discussed above.

26. Gamberini does not expressly teach the shut-off valve, the suction conduit, the feed conduit with at least two valves, the pneumatic feed system with a level sensor, and the opening and closing of valves as claimed in claim 14.

27. Regarding claim 12, Chard teaches the partitions / feed conduits for supplying different types of tobacco (see abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the separating partition of Chard in the method of Gamberini. The rationale to do so would have been the motivation provided by the teaching of Chard that to do so would allow two types of smoking material to be supplied to the process (see col. 1, lines 58-61).

28. Hagemann et al. (hereinafter Hagemann) teaches an apparatus for supplying particles of tobacco to processing machines. Hagemann teaches a shut-off valve (col. 3, line 19) as in claim 11, a suction conduit for producing a vacuum (see col. 3, lines 19-30; suction generating device... draw air) as in claim 12, and a sensor to detect the level of shredded tobacco (see col. 4, line 22; monitoring device 18) as in claim 13. Hagemann teaches it is well known to transport tobacco through a gaseous carrier medium (see col. 1, lines 10-17) which applies to claims 11-13. Regarding claim 14, Hagemann teaches the shutoff valve can be moved between open and closed positions (col. 5, lines 1-2). It would have been obvious to one of ordinary skill in the art to open and close the valves to correctly supply the first and second types of shredded tobacco at the appropriate times.

29. It would have been obvious to one of ordinary skill in the art to use the pneumatic system of Hagemann with the process of Gamberini. The rationale to do so would have been the motivation provided by the teaching of Hagemann that to do so would predictably regulate the rate of transport of flowable particulate material (see col. 2, lines 21-27).

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DANIEL LEE** whose telephone number is (571)270-7711. The examiner can normally be reached on **Monday-Thursday, 7:30-5:00**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L./
Examiner, Art Unit 4122

/Timothy J. Kugel/
Primary Examiner, Art Unit 1796